IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12349 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAROJBEN SURESHBHAI PATEL PROPRIETOR OF C.D.COLLECTION

Versus

SHETH BHAGVANDAS BRIJBHUSANDAS SHROFF

Appearance:

1. Special Civil Application No. 12349 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR BS PATEL for Respondent No. 1

MRS RANJAN B PATEL for Respondent No. 1

..... for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 25/10/2004

ORAL JUDGEMENT

Rule. Shri BS Patel, ld. advocate waives service of Rule on behalf of respondent No.1. With the consent of parties, the matter is taken up for final hearing today.

2. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order dated 16th August 2003 passed by the Gujarat State Cooperative Tribunal in Miscellaneous Application No. 25 of 2003 by which while passing the order to remove the seal on the shop in question the Tribunal stipulated a condition and directed to deposit 30% of the decretal amount.

3. Shri HR Prajapati, ld. advocate appearing on behalf of the petitioner has submitted that the petitioner is a bonafide purchaser of the shop in question who has in fact purchased the same on payment of Rs. 1,50,000 and therefore direction on the petitioner to deposit 30% of the decretal amoutn is too harsh and unreasonable more particularly in view of the fact that the petitioner is neither a debtor nor a guarantor nor he has taken any loan. Shri Prajapati has also submitted that the petitioner is ready and willing to deposit Rs. 1,50,000 with the respondent Bank in some reasonable instalments

4. Shri BS Patel, the ld. advocate appearing on behalf of respondent No.1 has submitted that in the facts and circumstances of the case it cannot be said that the petitioner is a bonafide purchaser of the shop in question, however he is not disputing the fact that the petitioner has purchased the shop in question for an amount of Rs. 1,50,000. He has, therefore, submitted that if the petitioner is to deposti Rs. 1,50,000 for which he has purchased the shop in question then an appropriate order be passed modifying the order passed by the Tribunal.

5. Heard the learned advocates appearing for the parties. It is an admitted position and as per the registered Sale Deed the petitioner has purchased the shop in question for Rs. 1,50,000. Therefore, direction on the petitioner to deposit 30% of the decretal amount which approximately come to mroe than Rs. 3 lakhs would be too harsh and unreasonable in the facts and circumstances of the case. When the petitioner has purchased the property in question for Rs. 1,50,000, the petitioner can be directed to deposit only that much amount for the purpose of removing the seal. Considering the aforesaid facts and circumstances of the case and without taking into consideration the larger question whether the petitioner is a bonafide purchaser of the shop in questin or not the impugned order passed by the Tribunal dated 16th August 2003 in Misc. Application No.

25 of 2003 is modified to the extent that instead of depositing of 30% of the decretal amount, the petitioner to deposit only Rs. 1,50,000. The rest of the order passed by the Tribunal is confirmed. At this stage, Shri Prajapati, ld. advocate for the petitioner requests to grant some reasonable instalments. In the facts and circumstances of the case, the petitioner is granted time upto 28th February 2005 to deposit Rs. 1,50,000 as directed hereinabove. Rule is made absolute with no order as to costs.

[M.R. Shah, J.]

rmr.